

PHILIP J. HINCKS

JUNE 26, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MACHROWICZ, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1113]

The Committee on the Judiciary, to whom was referred the bill (S. 1113) for the relief of Philip J. Hincks, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 304, Eighty-second Congress, which is appended hereto and made a part of this report.

Your committee concurs in the recommendation of the Senate.

[S. Rept. No. 304, 82d Cong., 1st sess.]

PURPOSE

The purpose of the proposed legislation, as amended, is to pay to Philip J. Hincks, of Middlebury, Vt., the sum of \$150 which represent the amounts of uniform allowance he would have received for reimbursement of amounts required to be expended by him for the purchase of uniforms during his training as a midshipman had not a physical disability prevented his receiving a commission.

STATEMENT

The bill, as amended, bears a favorable endorsement of the Navy Department, as well as the Department of Justice.

Departmental reports indicate that Hincks was appointed a midshipman (temporary), United States Naval Reserve on April 28, 1945, and while serving as such in the United States Naval Reserve Midshipman School, Chicago, Ill., was admitted to the sick list on July 25, 1945, 1 week prior to his graduation. His appointment as an ensign, United States Naval Reserve, was canceled prior to its delivery and acceptance by reason of his being found not physically qualified for such appointment because of rheumatic fever. On February 18, 1946, his appointment as midshipman was revoked and he was reverted to the rate of apprentice seaman.

The committee is informed that when a man was given an appointment as a temporary midshipman he was required to purchase his uniforms for such training from his own funds. He had no possible way of obtaining direct reimbursement for such expenditures because if he later qualified and became commissioned as an officer he was then granted an allowance to pay for the uniforms already purchased. If he failed to qualify, and never became so commissioned, he did not receive any uniform allowance.

In the second session of the Eighty-first Congress the committee considered a bill for the relief of Lee Freddy Lambert (H. R. 1124, which became Private Law 505) involving almost identical facts. The committee's reasoning with regard to that claim is equally applicable to this one. The committee feels that when an enlisted man accepted an appointment as a temporary midshipman and spent his own money for the necessary uniforms to take such training, he assumed the normal risk as to whether he would qualify for a commission and become an officer. If he passed, he received his uniform allowance; if he failed to pass, he did not and should not receive it. This was a risk voluntarily assumed by him and one for which he should not, under normal circumstances, be reimbursed. However, as in the Lambert case, Hincks was precluded from qualifying for his commission by reason of facts beyond his control, to wit, a disabling illness, rheumatic fever. The committee feels that in fairness, it must be assumed that absent such disabling sickness, he would have qualified and would have been commissioned an officer.

The above considerations prompt the committee to recommend that the bill be favorably considered. Attention is invited to a letter from the Department of Justice dated December 11, 1950; and letter from the Department of the Navy dated November 10, 1950.

DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, December 11, 1950.

HON. PAT McCARRAN,  
*Chairman, Committee on the Judiciary,*  
*United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 3789) for the relief of Philip J. Hincks.

The bill would provide for payment of the sum of \$250 to Philip J. Hincks, of Middlebury, Vt., which sum represents the amount of uniform allowance he would have received, for reimbursement of amounts required to be expended by him for the purchase of uniforms during his training as a midshipman had not a physical disability prevented his receiving a commission.

In compliance with your request, a report was obtained from the Department of the Navy concerning this legislation. According to that report, which is enclosed, it appears that claimant was appointed a midshipman (temporary) United States Naval Reserve, on April 28, 1945, and while serving as such at the United States Naval Reserve Midshipmen's School, Chicago, Ill., was admitted to the sick list on July 25, 1945, 1 week prior to his graduation. His appointment as an ensign, United States Naval Reserve, was canceled prior to its delivery and acceptance by reason of his being found not physically qualified for such appointment because of rheumatic fever. On February 18, 1946, his appointment as midshipman was revoked and he was reverted to the rate of apprentice seaman.

The report states that the regulations in effect during the period of claimant's service required midshipmen to purchase certain articles of uniform clothing which cost approximately \$150. It states that it is known that many of the midshipmen who were disenrolled sold the uniforms which they had purchased, or used for civilian or military dress those articles of uniform which were adaptable.

It appears that under the provisions of section 302 of the Naval Reserve Act of 1938 Naval Reserve officers are entitled to the peacetime allowance of \$100 for reimbursement for the purchase of required uniforms, and the further sum of \$150 for the purchase of required uniforms provided for officers first reporting for active duty in time of war or national emergency. In the case of a newly commissioned officer reporting for active duty in time of war or national emergency, both sums are paid him at the same time. The report states that any obligation of the Government to reimburse disenrolled midshipmen for expenditures for officer-type uniforms which were also part of the midshipman uniform allowance should be restricted to those midshipmen who were disenrolled through no fault of their own.

and so failed to receive full value for money required to be spent on uniforms while midshipmen. The report observes that the amount of such obligation should in no case exceed \$150, the cost of the required uniforms and that such sum should be adjusted downward to reflect (1) money received by sale of uniforms, and (2) the value of any use to which these required articles were put by the midshipmen after disenrollment.

The Navy Department states that it cannot ascertain the amounts of these adjustments and that therefore, it is opposed to granting general relief for uniform expenses to midshipmen disenrolled prior to acceptance of commission. It points out that there is a precedent for granting relief by way of private bill, as in the case of H. R. 1124 for the relief of Lee Freddie Lambert, when it is determined that disenrollment was the result of circumstances beyond the control of the midshipman concerned and there is adequate proof of the actual monetary loss incurred, and provided that such relief shall not exceed \$150.

The Navy Department states that accordingly, it would interpose no objection to enactment of the bill provided it is amended in accordance with the suggestions set out on page 3 of the report.

The Department of Justice concurs in the views of the Department of the Navy. The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,  
Deputy Attorney General.

DEPARTMENT OF THE NAVY,  
OFFICE OF THE JUDGE ADVOCATE GENERAL,  
Washington 25, D. C., November 10, 1950.

HON. J. HOWARD McGRATH,  
The Attorney General, Washington, D. C.

SIR: This report is in response to your request for comment on S. 3789 for the relief of Philip J. Hincks.

The purpose of the bill is to authorize and direct the Secretary of the Treasury to pay to Mr. Hincks the sum of \$250 which represents the amount of uniform allowance he would have received as reimbursement for the purchase of required uniforms upon reporting for active duty as an officer.

Under the provisions of section 302 of the Naval Reserve Act of 1938, Naval Reserve officers are entitled to the peacetime allowance of \$100 for reimbursement for the purchase of required uniforms, and the further sum of \$150 for the purchase of required uniforms provided for officers first reporting for active duty in time of war or national emergency. In the case of a newly commissioned officer reporting for active duty in time of war or national emergency, both sums are paid him at the same time.

The records of the Bureau show that Philip J. Hincks was appointed a midshipman (temporary), United States Naval Reserve on April 28, 1945, and while serving as such at the United States Naval Reserve Midshipmen's School, Chicago, Ill., was admitted to the sick list on July 25, 1945, at the United States Naval Hospital, Great Lakes, Ill. This occurred 1 week prior to his graduation. His appointment as an ensign, United States Naval Reserve, was canceled prior to its delivery and acceptance by reason of his being found not physically qualified for such appointment because of rheumatic fever. On February 18, 1946, in view of a report of a medical survey, Hincks' appointment as midshipman (temporary), United States Naval Reserve, was revoked and he was reverted to the rate of apprentice seaman.

The regulations in effect during the period of Hincks' service required midshipmen, in anticipation of the uniform gratuity, to purchase, if they did not already possess, certain articles of uniform clothing which cost approximately \$150. These uniforms were required and worn during the period of midshipman training. It is known that many of the midshipmen who were disenrolled sold the uniforms which they had purchased, or used, for civilian or military dress, those articles of uniform which were adaptable.

Any obligation of the Government to reimburse disenrolled midshipmen for expenditures for officer-type uniforms which were also part of the midshipman uniform allowance should be restricted to those midshipmen who were disenrolled through no fault of their own and so failed to receive full value for money required to be spent on uniforms while midshipmen. The amount of such obligation should in no case exceed \$150, the cost of the required uniforms. This sum

should be adjusted downward to reflect (1) money received by sale of uniforms, and (2) the value of any use to which these required articles were put by the midshipmen after disenrollment.

The Navy Department cannot ascertain the amounts of these adjustments; therefore, it is opposed to granting general relief for uniform expenses to midshipmen disenrolled prior to acceptance of a commission. Precedent exists for relief in the form of a private bill, as was granted by H. R. 1124, for the relief of Lee Freddie Lambert, when it is determined that disenrollment was the result of circumstances beyond the control of the midshipman concerned and there is adequate proof of the actual monetary loss incurred, and provided that such relief shall not exceed \$150.

Accordingly, the Navy Department would interpose no objection to enactment of S. 3789 provided it is amended by striking all after line 5, page 1, through "commission", line 1, page 2, and inserting the following in lieu thereof: "the sum of \_\_\_\_\_ [not greater than \$150]. The payment of such sum shall be in full payment of all claims of the said Philip J. Hincks against the United States for reimbursement of money paid for uniforms which were required during his training as a midshipman at the United States Naval Reserve Midshipman School, Abbott Hall, Chicago, Illinois:"

G. L. RUSSELL,  
*Rear Admiral, United States Navy,*  
*Judge Advocate General of the Navy.*

